

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

INDECK KEYSTONE ENERGY, LLC, a  
Delaware limited liability company,

Plaintiff

v.

VICTORY ENERGY OPERATIONS, LLC, a  
Delaware limited liability company,

Defendant.

CIVIL ACTION

No. 04-CV-325E

Judge Sean J. McLaughlin

JURY TRIAL DEMANDED

**DEFENDANT'S SUPPLEMENTAL ANSWERS TO PLAINTIFF'S  
FIRST SET OF DISCOVERY REQUESTS**

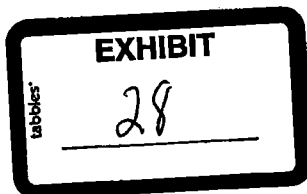
Defendant VICTORY ENERGY OPERATIONS, LLC ("VEO"), by and through its undersigned counsel, for its supplemental answers to INDECK KEYSTONE ENERGY, LLC's First Set of Discovery Requests states as follows:

**GENERAL OBJECTIONS**

VEO objects to the Discovery Requests to the extent that they seek to impose burdens on VEO that are inconsistent with, or in addition to, VEO's discovery obligations pursuant to the Federal Rules of Civil Procedure.

VEO objects to the Discovery Requests as unduly burdensome to the extent that they seek to impose on VEO the obligation to identify facts that are not known to VEO or VEO's personnel. VEO will not undertake to ascertain facts that are not reasonably within VEO's knowledge and/or control.

VEO objects to the Discovery Requests to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, applicable regulatory privileges or any other privilege or immunity.



VEO objects to the Discovery Requests to the extent that they seek information that is equally available to Plaintiff through third parties and/or public entities.

VEO incorporates the General Objections into each Response herein as if fully set forth. Without waiving any of these objections, all of which are incorporated by reference in the Responses below, VEO specifically responds to the Discovery Requests as follows:

#### **INTERROGATORIES**

4. With respect to any “improvement” (as defined in the License) to the Keystone® boiler, identify:

- (a) Each “improvement” discovered by VEO;
- (b) Each “improvement” made by VEO; and
- (c) All documents that concern, refer or relate to each such “improvement”.

**ANSWER:** VEO objects to this interrogatory to the extent it is vague and ambiguous. There were no Improvements to the Products pursuant to the terms and definitions in the License Agreement. To the extent any design changes were made to the Products by VEO, they at most constitute Improvements that did not require prior written notice under the License Agreement. Notwithstanding the foregoing, VEO manufactured and designed boilers that differed from the design specifications set forth in Annex I to the License Agreement as set forth below:

**Project**

**A. JVE-229, Broin & Associates**

**Note:**

The above unit was thermally rated, designed and engineered by Terry Pawlowski of EPTI.

Boiler Model – 15M

**Changes**

1. Membrane Furnace Walls
2. Membrane Outer Walls  
Project JVE 229
3. Boiler Height –
4. Boiler Length –
5. Projected Radiant Surface Area (Sq.Ft.)
6. Effective Radiant Surface Area NG (Sq.Ft.)
7. Furnace Length 272"
8. Furnace Volume (Ft3)
9. Furnace Height 70.80"
10. Furnace Turning Lane Distance 16"
11. Convective Zone Flow Area (Sq.Ft.)
12. Effective Convective Heating Surface (Sq.Ft.)

Standard 15M

REDACTED

**Project**

**B. JVE-230, Broin & Associates**

**Note:**

The above unit was thermally rated, designed and engineered by Terry Pawlowski of EPTI.

Boiler Model – 15M

**Changes**

1. Membrane Furnace Walls
2. Membrane Outer Walls  
Project 230
3. Boiler Height – [REDACTED]
4. Boiler Length – [REDACTED]
5. Projected Radiant Surface Area (Sq.Ft.) [REDACTED]
6. Effective Radiant Surface Area NG (Sq.Ft.) [REDACTED]
7. Furnace Length [REDACTED]
8. Furnace Volume (Ft3)
9. Furnace Height [REDACTED]
10. Furnace Turning Lane Distance [REDACTED]
11. Convective Zone Flow Area (Sq.Ft.) [REDACTED]
12. Effective Convective Heating Surface (Sq.Ft.) [REDACTED]

Standard 15M

REDACTED

**Project**

**C. JVE-235, Broin & Associates**

Note:

The above unit was thermally rated, designed and engineered by Terry Pawlowski of EPTI.

Boiler Model – 15M

**Changes**

1. Membrane Furnace Walls
2. Membrane Outer Walls

Project 235

Standard 15M

3. Boiler Height – [REDACTED]
4. Boiler Length – [REDACTED]
5. Projected Radiant Surface Area (Sq.Ft.) [REDACTED]
6. Effective Radiant Surface Area NG (Sq.Ft.) [REDACTED]
7. Furnace Length [REDACTED]
8. Furnace Volume (Ft3) [REDACTED]
9. Furnace Height [REDACTED]
10. Furnace Turning Lane Distance [REDACTED]
11. Convective Zone Flow Area (Sq.Ft.) [REDACTED]
12. Effective Convective Heating Surface (Sq.Ft.) [REDACTED]

REDACTED

**Project**

**D. JVE-251, Roswell Park, NY**

Note:

The above unit was thermally rated, designed and engineered by Steve Bernatowicz of EPTI.

Boiler Model – 12M

**Changes**

1. Membrane Furnace Walls
2. Membrane Outer Walls

Project 251

Standard 12M

3. Boiler Height – [REDACTED]
4. Furnace Volume (Ft3) [REDACTED]
5. \*Effective Convective Heating Surface (Sq.Ft.) [REDACTED]

\*Value given by EPTI is incorrect as the unit included a membrane furnace and outer walls which would have lowered the effective connective heating surface area.

REDACTED

**Project**

**E. JVE-254, Atofina Petrochemicals**

**Note:**

The above unit was thermally rated, designed and engineered by Steve Bernatowicz of EPTI.

Boiler Model – 14M

**Changes**

1. Membrane Furnace Walls
2. Membrane Outer Walls

REDACTED

Standard "M" Series 14M

3. Boiler Height – [REDACTED]
4. Boiler Length – [REDACTED]
5. Furnace Turning Lane Distance [REDACTED]
6. \*Effective Convective Heating Surface (Sq.Ft.) [REDACTED]

\*Value given by EPTI is incorrect as the unit included a membrane furnace and outer walls which would have lowered the effective connective heating surface area.

**Project**

**F. JVE-262, Walker Building, Dallas Forth Worth Airport**

**Note:**

The above unit was thermally rated, designed and engineered by VEO with paid assistance from EPTI.

Boiler Model – 15M

**Changes**

1. Membrane Furnace Walls
2. Front Wall Tube Diameter Change (EPTI)
3. Membrane Outer Walls
4. Boiler Length Change
5. Boiler Height Change
6. Projected Radiant Surface Area Change
7. Effective Radiant Surface Area Change
8. Furnace Length Change
9. Furnace Volume Change
10. Furnace Turning Lane Distance Change
11. Convective Zone Flow Area
12. Transverse Tube Spacing
13. Effective Convective Heating Surface Change

**Project**

**G. JVE-282, Logan Aluminum**

Note:

The above unit was thermally rated, designed and engineered by VEO.

Boiler Model – 15M

1. \*Membrane Furnace Walls
2. \*Membrane Outer Walls
3. \*Boiler Length Change
4. Projected Radiant Surface Area Change Due to SH
5. Effective Radiant Surface Area Change Due to SH
6. Furnace Length Change Due to Addition of SH
7. Furnace Volume Change Due to Addition of SH
8. \*Furnace Turning Lane Distance Change
9. \*Effective Convective Heating Surface Change
10. Addition of a Superheater
11. \*Convective Zone Flow Area
12. Change in Drum Internals Due to Addition of SH

\* Same as JVE-229, JVE-230, JVE-235 thermally rated, designed and engineered by Terry Pawlowski of EPTI.

**Project**

**H. JVE-285, Protherm Nestle**

The above unit was thermally rated by VEO.

Boiler Model – 15M

1. \*Membrane Furnace Walls
2. \*Membrane Outer Walls
3. \*Boiler Height
4. \*Boiler Length
5. \*Projected Radiant Surface Area
6. \*Effective Radiant Surface Area
7. \*Furnace Length
8. \*Furnace Volume
9. \*Furnace Height
10. \*Furnace Turning Lane Distance
11. \*Convective Zone Flow Area
12. \*Effective Convective Heating Surface

\* The above unit was a duplicate of JVE-229, JVE-230, JVE-235 each thermally rated, designed and engineered by Terry Pawlowski of EPTI.

**Project**

**I. JVE-289, Tejas/Oxy Viny'ls**

The above unit was thermally rated, designed and engineered by VEO with assistance from EPTI.

**Boiler Model – 15M**

1. Membrane Furnace Walls
2. Membrane Outer Walls
3. Boiler Height
4. Boiler Length
5. Projected Radiant Surface Area
6. Effective Radiant Surface Area
7. Furnace Length
8. Furnace Volume
9. Furnace Height
10. Furnace Turning Lane Distance
11. Convective Zone Flow Area
12. Effective Convective Heating Surface
13. Upper Steam Drum Diameter Change
14. Furnace & Convective Tube Layout Change

Note:

EPTI assisted VEO in the above changes.

**Project**

**J. JVE-301 & 302, Ware Inc.**

The above unit was thermally rated, designed and engineered by VEO.

**Boiler Model – 15M**

1. Membrane Furnace Walls
2. Membrane Outer Walls
3. Boiler Height
4. Boiler Length
5. Projected Radiant Surface Area
6. Effective Radiant Surface Area
7. Furnace Length
8. Furnace Height
9. Furnace Width
10. Furnace Volume
11. Furnace Turning Lane Distance
12. Convective Zone Flow Area
13. Effective Convective Heating Surface

**Project**

**K. JVE-303, Idaho State University**

The above unit was thermally rated by VEO.

**Boiler Model – 15M**

1. \*Membrane Furnace Walls
2. \*Membrane Outer Walls
3. \*Boiler Height
2. \*Boiler Length
3. \*Projected Radiant Surface Area
4. \*Effective Radiant Surface Area
5. \*Furnace Length
6. \*Furnace Volume
7. \*Furnace Height
8. \*Furnace Turning Lane Distance
9. \*Convective Zone Flow Area
10. \*Effective Convective Heating Surface

\* The above unit was a duplicate of JVE-229, JVE-230, JVE-235 each thermally rated, designed and engineered by Terry Pawlowski of EPTI.

**Project**

**L. JVE-313, J.C. Higgins, WPTI**

The above units were thermally rated, designed and engineered by VEO.

**Boiler Model – Two (2) 14M**

1. Membrane Furnace Walls
2. Membrane Outer Walls
3. Boiler Height
4. Boiler Length
5. Projected Radiant Surface Area
6. Effective Radiant Surface Area
7. Furnace Length
8. Furnace Volume
9. Furnace Height
10. Furnace Turning Lane Distance
11. Convective Zone Flow Area
12. Effective Convective Heating Surface

**Note:**

The above changes are common to the 14M units.

**Project**

**M. JVE-344, Ware Inc.**

The above units were thermally rated, designed and engineered by VEO.

Boiler Model – 8M

**Changes**

1. Membrane Front & Rear Walls
2. Membrane Furnace Walls
3. Membrane Outer Walls
4. Boiler Length
5. Projected Radiant Surface Area
6. Effective Radiant Surface Area
7. Furnace Length
8. Furnace Volume
9. Furnace Turning Lane Distance
10. Effective Convective Heating Surface

**Project**

**N. JVE-347, Michigan Ethanol**

The above unit was thermally rated, designed and engineered by VEO.

Boiler Model – 15M

1. \*Membrane Furnace Walls
2. \*Membrane Outer Walls
3. \*Boiler Height
4. \*Boiler Length
5. \*Projected Radiant Surface Area
6. \*Effective Radiant Surface Area
7. \*Furnace Length
8. \*Furnace Volume
9. \*Furnace Height
10. \*Furnace Turning Lane Distance
11. \*Convective Zone Flow Area
12. \*Effective Convective Heating Surface

\* The above unit was a duplicate of JVE-229, JVE-230, JVE-235 each thermally rated, designed and engineered by Terry Pawlowski of EPTI.

**Project**

**O. JVE-356, Ware Inc.**

The above units were thermally rated, designed and engineered by VEO.

Boiler Model – 15M

1. Membrane Furnace Walls
2. Membrane Outer Walls
3. Boiler Height
4. Boiler Length
5. Projected Radiant Surface Area
6. Effective Radiant Surface Area
7. Furnace Length
8. Furnace Height
9. Furnace Width
10. Furnace Volume
11. Furnace Turning Lane Distance
12. Convective Zone Flow Area
13. Effective Convective Heating Surface

**Project**

**P. JVE-390, Tejas NASA**

The above units were thermally rated, designed and engineered by VEO.

Boiler Model – 15M

Boiler Height

1. \*Membrane Furnace Walls
2. \*Membrane Outer Walls
3. Boiler Length Change
4. Projected Radiant Surface Area Change Due to Addition of SH
5. Effective Radiant Surface Area Change Due to Addition of SH
6. Furnace Length Change Due to Addition of SH
7. Furnace Volume Change Due to Addition of SH
8. Furnace Turning Lane Distance Change
9. Effective Convective Heating Surface Change
10. Addition of a Superheater
11. Change in Drum Internals Due to Addition of Superheater

\* Same as JVE-229, JVE-230, JVE-235 thermally rated, designed and engineered by Terry Pawlowski of EPTI.

Note:

Drawings, design and engineering is in progress and have not been completed.

5. With respect to any "modification" (as defined in the License Agreement) to the Keystone® boilers, identify:

- (a) Each "modification" developed by VEO;
- (b) When EPTI provided prior written approval for each such "modification;" and
- (c) All documents that concern, refer or relate to each such "modification".

**ANSWER:** VEO objects to this interrogatory as no definition of the term "modification" is provided in the License Agreement. Notwithstanding said objection, VEO did not make any "modification" of any Products under the License Agreement, because the term "modification" under the License contemplates a change that may impact the reliability or performance of the Product. To the extent any variation from the specifications delineated in Annex I to the License could be deemed a "modification," VEO complied with Clause 3(e) of the License, so that prior written notice was unnecessary.

Dated: September 9, 2005

Respectfully submitted,

/s/ Christopher T. Sheean  
One of the Attorneys for Defendant,  
VICTORY ENERGY OPERATIONS, LLC

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